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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re Applications of)
)
AMERITECH CORP.,)
Transferor,)
)
AND)
)
SBC COMMUNICATIONS INC.,)
Transferee,)
)
For Consent to Transfer Control of)
Corporations Holding Commission Licenses and)
Authorizations Pursuant to Sections 214 and)
310(d) of the Communications Act and)
Parts 5, 22, 24, 25, 63, 90, 95 and 101)
Of the Commission's Rules)

CC Docket No. 98-141

**MOTION TO REQUIRE FULL DISCLOSURE
OF RELATIONSHIP WITH SMITH ALARM**

The Alarm Industry Communications Committee ("AICC"), pursuant to Section 1.41 of the Commission's rules, 47 C.F.R. § 1.41, respectfully requests that the Commission require Ameritech Corporation ("Ameritech") and SBC Corporation ("SBC") to submit to the Commission, and to make available to others pursuant to the protective order in this case, all documents pertaining to their relationship with Smith Alarm Systems, Inc. ("Smith Alarm"), an unaffiliated provider of alarm monitoring services.

AICC makes this request because recent published reports and public statements by Ameritech executives reveal that Ameritech (directly or through its wholly-owned subsidiary, SecurityLink from Ameritech, Inc. ("SecurityLink")) has entered into an arrangement with Smith

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Alarm which could render any divestiture of SecurityLink a sham, and which also appears to violate Section 275(a)(2) of the Act. In support of this request, AICC provides the following information:

BACKGROUND

Section 275(a)(1) of the Communications Act prohibits Bell Operating Companies (“BOCs”) and their affiliates from providing alarm monitoring services until February 8, 2001, five years after enactment of the Telecommunications Act of 1996 (“1996 Act”).¹ Ameritech was permitted to retain its existing alarm monitoring activities, pursuant to the grandfather provision of Section 275(a)(2) of the Act, provided, however, that it may not acquire an equity interest in, or obtain financial control of, an unaffiliated alarm monitoring provider.² In other proceedings, the Commission has determined that Ameritech violated this provision multiple times since passage of the Act, and initiated Show Cause proceedings to address divestiture of the unlawful acquisitions.³ AICC is hopeful that Ameritech’s violations will be remedied promptly.

In this proceeding, AICC has argued that, irrespective of the ultimate result of the Show Cause proceedings, divestiture of SecurityLink would be necessary if SBC were to acquire

¹ 47 U.S.C. § 275(a)(1).

² 47 U.S.C. § 275(a)(2).

³ *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order and Order to Show Cause, FCC 98-148 (rel. July 8, 1998) (*CCA/Norman/Masada Show Cause Order*); *Enforcement of Section 275(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Against Ameritech Corporation*, Memorandum Opinion and Order and Order to Show Cause, FCC 98-226 (rel. September 25, 1998) (*Circuit City Show Cause Order*). In (continued...)

ownership or control of Ameritech. As AICC explained in its comments on the merger application, Section 275(a)(1) – which governs SBC’s involvement in alarm monitoring services – prohibits SBC’s ownership of SecurityLink. If the merger is consummated, SecurityLink would become an affiliate of SBC Corporation, as that term is defined in the Communications Act.⁴ Because SecurityLink provides alarm monitoring services, its acquisition by SBC would result in SBC providing (through an affiliate) alarm services, in violation of Section 275(a)(1). Therefore, AICC argued that, as a condition precedent to approving a merger between SBC and Ameritech, the Commission must order SBC and Ameritech to divest ownership of SecurityLink and cease providing alarm monitoring services.⁵

I. AMERITECH’S ARRANGEMENTS WITH SMITH ALARM COULD THWART EFFECTIVE ENFORCEMENT OF SECTION 275(A) OF THE COMMUNICATIONS ACT

Although AICC’s arguments are pending before the Commission, Ameritech has taken steps which threaten to render any action in response to AICC’s comments a nullity. Specifically, AICC is concerned by published reports and recent statements by Ameritech executives which confirm that:

(...continued)

addition, the Commission has yet to rule on a third motion by AICC pertaining to Ameritech’s acquisitions of Republic Securities and Rollins, Inc. *See* CCBPol 97-11.

⁴ 47 U.S.C. § 153(1).

⁵ SBC and Ameritech’s discussion of Section 275(a)(2) in their joint reply is irrelevant. SBC is not “a Bell operating company that was engaged in providing alarm monitoring services as of November 30, 1995,” and, moreover, Section 275(a)(2)’s limited exception for the Ameritech operating companies cannot be expanded to grandfather SBC and its subsidiaries after consummation of the merger. Clearly, Section 275 would be violated if SBC purchased SecurityLink from Ameritech. SBC and Ameritech have offered no explanation of why, if Congress chose to prohibit SBC from buying SecurityLink outright, the statute would allow SBC to accomplish the same result by purchasing all of Ameritech.

- Ameritech has paid a reported \$6 million for an option to purchase Smith Alarm in March 2001, at a price which has already been negotiated; and
- Ameritech has agreed to bankroll Smith Alarm in pursuing additional alarm monitoring acquisitions.⁶

Smith Alarm is a privately-held alarm monitoring service entity based in Dallas, Texas. According to a survey by a leading industry trade publication, Smith Alarm is the 15th largest provider of alarm monitoring services, with annual revenues in excess of \$32 million. Until recently, Smith Alarm had no affiliation or other relationship with Ameritech.

At a recent Wall Street investment meeting in New York, Gerald DeNicholas, Vice President of Business Development and Strategy for SecurityLink, confirmed that Ameritech has obtained an option to purchase Smith Alarm in 2001.

Charles May, Smith Alarm's president, confirmed this as well, according to a report in Crain's Chicago Business.⁷ Although Mr. May refused to disclose the details of the arrangement, Ameritech reportedly paid \$6 million for this option.⁸ The financial terms of Ameritech's purchase of Smith Alarm in 2001 already have been negotiated as part of the option.⁹

Moreover, Ameritech is actively involved with Smith Alarm today. Smith Alarm's Mr. May is quoted in the Crain's article as stating that, "They [Ameritech]

⁶ See Oloroso, "Rivals Sound Ameritech Alarm: A ploy to get around ban on security firm deals?," *Crain's Chicago Business*, November 23, 1998, at 1 (Attached to this Motion as Exhibit A) (hereinafter, "Ameritech Alarm").

⁷ *Ameritech Alarm*, at 28.

⁸ *Id.*

⁹ *Id.*

have offered to lend me money if I need it to pursue acquisitions. . . . And I want to do it.”¹⁰ It appears that Smith Alarm already is acting on Ameritech’s lending commitment. Prior to the Ameritech deal, Smith Alarm had never pursued acquisitions outside its region, but now, Smith Alarm is an active bidder for at least one significant alarm company with principal assets outside of Texas. This new activity would not be possible but for Ameritech’s financial support.

In addition, AICC believes that Smith Alarm has an explicit or implicit agreement to purchase any assets that Ameritech is required to divest as a result of FCC orders – assets which, as a result of Ameritech’s option to purchase Smith Alarm, would soon return to Ameritech. AICC members have received reports that any divestiture by Ameritech would be made to Smith Alarm, and AICC continues to investigate this through publicly-available sources.¹¹

A. Ameritech’s Arrangement with Smith May Reduce Divestiture to a Sham

These arrangements raise significant questions concerning the Commission’s ability to address AICC’s arguments in this proceeding. Any explicit or implicit agreement by which Ameritech or SBC is able to sell assets to Smith Alarm and then repurchase them in 2001 would be a blatant circumvention of the Act and the Commission’s orders. If Smith Alarm holds an option to purchase assets from SecurityLink, or if Ameritech (or SBC) has an explicit or implicit

¹⁰ *Id.*

¹¹ As reported by *Crain’s Chicago Business*, Ameritech “says Smith Alarm has no option to purchase any security business divested by Ameritech.” *Id.* This statement is contrary to (continued...)

understanding that Smith Alarm would purchase Ameritech's alarm monitoring business, then divestiture would have little meaning. Under such circumstances, a purchase by Smith Alarm of divested SecurityLink assets would, in essence, result in Ameritech merely storing its alarm monitoring activities temporarily in Smith Alarm.¹² Even if Ameritech did not hold title to the alarm monitoring business, ownership and control would be a mere tug of the Yo-Yo away.

B. Ameritech May Have Financial Control Over Smith Alarm

In addition to its concern that divestiture will be a sham, AICC believes that Ameritech's option/lending arrangement is itself a violation of Section 275. Ameritech's involvement with Smith Alarm likely violates Section 275(a)(2) by giving Ameritech "financial control" over an unaffiliated alarm monitoring service entity.

Impermissible "financial control" over an unaffiliated alarm monitoring service entity may occur in a number of ways. That is why the Commission has ruled that financial control must be determined "by looking at the totality of the circumstances involved in a particular case" and recognized that "a broad range of factors may demonstrate direct or indirect control [in violation of Section 275(a)(2)]."¹³ By way of example, the Commission recognized that financial control might exist "when Ameritech makes financial decisions for an ongoing alarm

(...continued)

reports AICC members have received, and AICC has been unable to verify the reported statement.

¹² Moreover, Ameritech's option to purchase Smith Alarm most likely specifies a purchase price based upon Smith Alarm's recurring revenues. This gives Smith Alarm an advantage over any other bidder for SecurityLink, because it is assured of a known return in 2001, provided it can retain the purchased accounts until that time.

¹³ *CCA/Norman/Masada Show Cause Order* at ¶ 25.

monitoring service entity”¹⁴ or if Ameritech obtains “control of the business operations of another company through some other financial or administrative arrangement.”¹⁵ Even Ameritech (which urged a narrow interpretation of financial control) repeatedly conceded that lending arrangements can result in financial control of an unaffiliated alarm monitoring service.¹⁶

Ameritech’s option/lending arrangement implicates Section 275(a)(2) in several ways. The Commission has treated options as attributable interests for purposes of its PCS C block auctions¹⁷ and has recognized that the existence of options to purchase can be a factor in the analysis of *de facto* control issues.¹⁸ Indeed, Ameritech’s option gives it an incentive to discriminate in favor of Smith Alarm and raises the potential that Smith Alarm will be used as an agent to conduct activities (such as acquisitions of other alarm companies) that SecurityLink is prohibited from conducting. Moreover, lending arrangements typically give the lender approval rights over certain business activities and impose a number of restrictions on the borrower’s

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 30.

¹⁶ See Ameritech Comments at 7, CCB Pol 96-17 (filed Sept. 6, 1996) (financial control includes “financing the operations of [an unaffiliated] company in exchange for a *de jure* or *de facto* right to control its financial decisions”); Ameritech Comments at 15, CCB Pol 96-17 (filed May 21, 1997) (conceding that “an ongoing financial relationship” would be problematic and asserting that Ameritech “is neither a lender to, nor a creditor of” entity at issue); Ameritech Comments at 15, CCB Pol 97-8 (filed August 4, 1997) (financial control would result “if Ameritech were to attempt to dictate the operations of [the alarm company] either contractually or by force”); Brief of Intervenor Ameritech Corporation at 14 (D.C. Cir. No. 97-1218, Sept. 10, 1997) (financing arrangements may result in financial control).

¹⁷ See 47 C.F.R. § 24.709(b)(7). Although the FCC generally does not address foreign ownership issues until an option is exercised, radio ownership rules require FCC approval in order to exercise such options. Thus, unlike Ameritech’s unilateral options to purchase Smith Alarm, the FCC has the ability in radio ownership cases to prevent unlawful or impermissible ownership interests from being exercised.

¹⁸ See, e.g., *Ellis Thompson Corp.*, 9 FCC Rcd 7138 (1994) (designating real party in interest issues involving company with an option agreement and other arrangements).

actions. Certainly, one would not expect Ameritech to loan Smith Alarm substantial sums of money (to be used, according to Mr. May, to acquire other alarm companies that ultimately will be sold to Ameritech) unless Ameritech also obtained rights to approve and/or control Smith Alarm's activities in important ways. Individually and collectively, these arrangements may already have given Ameritech financial control over Smith Alarm.

II. THE COMMISSION SHOULD REQUIRE SUBMISSION OF THE RELEVANT DOCUMENTS IN ORDER TO EVALUATE AMERITECH'S RELATIONSHIP WITH SMITH ALARM

In order to ensure that the Commission has all relevant information, and to protect its ability to enforce Section 275, the Commission should require Ameritech and SBC to submit for Commission review all documents pertaining to their relationship with Smith Alarm. The companies may, if they choose, submit these documents according to the procedures set forth in the Protective Order adopted in this proceeding.¹⁹ AICC's representatives are ready and willing to adhere to those procedures in reviewing the documents submitted in this proceeding.

¹⁹ *Order Adopting Protective Order*, DA 98-1952 (rel. Oct. 2, 1998).

CONCLUSION

For the foregoing reasons, AICC respectfully requests that the Commission require Ameritech and SBC to submit all relevant documents pertaining to their relationship with Smith Alarm Systems, Inc.

Respectfully submitted,

**THE ALARM INDUSTRY COMMUNICATIONS
COMMITTEE**

By  _____

Danny E. Adams
Steven A. Augustino
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

December 3, 1998

CERTIFICATE OF SERVICE

I hereby certify that copies of the Alarm Industry Communications Committee's **"Motion to Require Full Disclosure of Relationship With Smith Alarm"** were served by hand and/or first class mail, postage prepaid, this 3rd day of December, 1998 upon the following:

Regina M. Keeney (2 copies)
Chief, International Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 800
Washington, D.C. 20554

Carol Matthey (2 copies)
Chief, Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, D.C. 20554

Jeanine Poltronieri
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

Steve Weingarten
Chief, Commercial Wireless Division
Federal Communications Commission
2100 M Street, N.W.
Room 7023
Washington, D.C. 20554

James D. Ellis
Wayne Watts
SBC Communications, Inc.
175 E. Houston
San Antonio, TX 78205

Kelley Welsh
Richard Hetke
Ameritech Corporation
30 South Wacker Drive
Chicago, IL 60606

Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004

Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K Street, N.W.
Washington, D.C. 20005

Evan M. Tager
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

International Transcription Services, Inc.
2100 M Street, N.W., Suite 140
Washington, D.C. 20036



Patricia A. Bell

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Rivals sound Ameritech alarm

A ploy to get around ban on security firm deals?

By ARSENIO OLOROSO JR.

Ameritech Corp. is signaling that it intends to be a growing force in the security monitoring business, sparking fierce objections from rivals that contend the Baby Bell is making an end run around federal

law to expand in the industry.

The Chicago-based telephone company, which is merging with Texas' SBC Communications Inc., recently purchased an option to acquire Dallas-based Smith Alarm Systems in 2001. It also has offered to lend money to Smith to acquire other security firms

See AMERITECH on Page 28

Alarmed: Ameritech rival Robert Bonifas charges the Baby Bell is trying to skirt federal laws against expanding in the security business. Ameritech disagrees.



STEVE LEONARD

Rivals sound alarm over Ameritech strategy

AMERITECH from Page 1
between now and 2001, according to Smith Alarm's president.

Security firm challengers claim that Ameritech, already a major player in the security business, is trying to sidestep a provision of the Telecommunications Act of 1996 that prohibits Baby Bells from entering the business until 2001. While the law allows Ameritech to keep its SecurityLink from Ameritech unit, it precludes further acquisitions of security monitoring companies until that year.

"This is just a creative way to get around (the law)," says Robert A. Bonifas, president and CEO of Aurora-based Alarm Detection Systems Inc. "Since the ink has dried (on the Telecommunications Act), they've been trying to find ways to circumvent it."

Feds could order selloff

Ameritech blasts critics who charge that purchasing an option to buy Smith Alarm violates the federal law. "That's simply speculation by competitors who have long fought to shut us out as a

competitor in the security business," the company says in a statement.

Adding to this ferment is the possibility that federal antitrust investigators who are scrutinizing the proposed \$71.6-billion merger of Ameritech and San Antonio-based SBC could order either company to sell off some of its businesses, including Ameritech's security alarm segment.

Last week, Smith Alarm President Charles "Chick" May confirmed that his company recently sold the option to Ameritech for an undisclosed price. (Industry insiders say the option price was around \$6 million.)

Mr. May says that Ameritech, which approached him four months ago with an offer, can exercise the option to purchase Smith Alarm during a 30-day window between March 1 and 30, 2001. (The federal ban expires on Feb. 8.)

As part of the deal, "they have offered to lend me money if I need it to pursue acquisitions," Mr. May adds. "And I want to do it." He declined to reveal how much Ameritech has agreed to

lend Smith Alarm.

Mr. May also refused to detail financial terms, already negotiated with Ameritech, for a buyout of the company.

"There's no guarantee they'll do it," he says, but adds, "We felt this would net us the highest return."

Security services competitors are accusing Ameritech of trying to circumvent federal efforts to increase competition in the security monitoring industry.

In a recent brief filed with the Federal Communications Commission (FCC), they hint that Ameritech wants to thwart any commission order forcing the company to divest recently acquired security companies.

FCC concerns have centered on six security monitoring acquisitions by Ameritech since the 1996 law went into effect. Since July, the FCC has ruled that four of them were illegal and has ordered Ameritech to explain why the acquired companies should not be divested. FCC rulings on the other two acquisitions are pending.

The document filed Nov. 9 with the FCC by the Alarm Industry

Communications Committee (AICC), part of a Virginia-based industry trade group, states that Ameritech would be in compliance with federal law only if any divestiture "is made to a truly unfiliated entity and is not a sham."

Says AICC lawyer Steven A. Augustino of the Washington, D.C., firm Kelley Drye & Warren: "We believe what they've done is to enter into an agreement whereby they'll sell Smith Alarm anything they're ordered to divest, and it will bounce back to them when (they acquire Smith Alarm in 2001)."

'Workable strategy'

Ameritech, the nation's second-largest security services provider behind Boca Raton, Fla.-based ADT Inc., denies AICC's charges and says it's in full compliance with the law. The company says Smith Alarm has no option to purchase any security business divested by Ameritech.

In fact, the wording of the telecom act doesn't expressly preclude Ameritech from purchasing an option to acquire Smith Alarm at a later date and merging it with

SecurityLink.

The Ameritech option deal "sounds like a very workable strategy," says telecommunications equity analyst Rex G. Mitchell of Charlotte, N.C.-based brokerage NationsBanc Montgomery Securities Inc.

Smith Alarm would be a plum acquisition for Ameritech, whose SecurityLink business has an estimated 1 million customers nationwide and more than \$500 million in annual revenues.

Privately owned Smith Alarm, with 50,000 customers, has offices in Dallas, Fort Worth, Houston, Austin and El Paso and projects 1998 revenues of \$40 million.

However, Wall Street has been speculating that SBC will spin off or sell SecurityLink after the merger with Ameritech, which is slated to close in the second half of 1999, provided it clears antitrust scrutiny.

An SBC spokesman says the company will make final decisions on what Ameritech businesses will remain only after the merger is concluded.

Go to **CRAIN'S** online for in-depth coverage of Ameritech and its security monitoring business at www.crainsicagobusiness.com.